



**STATEMENT OF
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THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**HOUSE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE
“QUESTIONS REGARDING THE U.S. CENSUS”**

June 8, 2018

Chairman King, Ranking Member Cohen, and Members of the Subcommittee: I am Vanita Gupta, president and CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit this statement for the record in this important hearing.

The Leadership Conference is a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education. The Leadership Conference provides a powerful unified voice for the many constituencies of the coalition: persons of color, women, children, individuals with disabilities, LGBTQ individuals, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations.

Given the breadth of our coalition, The Leadership Conference is ideally positioned to address many of the most pressing issues affecting the successful implementation of Census Bureau programs, surveys, and initiatives. We and the Leadership Conference Census Task Force co-chairs, NALEO Educational Fund and Asian Americans Advancing Justice-AAJC, have a long record of first-hand experience working in support of previous censuses. For the 2010 Census, we undertook the most comprehensive and extensive effort by a stakeholder organization to promote participation in historically hard-to-count communities and to mobilize local advocates in support of the census by highlighting the community benefits, civil rights implications, and constitutional imperative of an accurate count. We are now building upon our previous work to help ensure that no one is left out of the 2020 Census.

Ensuring a Fair and Accurate Census

The Leadership Conference views a fair and accurate 2020 Census as one of the most important civil rights issues of our day. Not only is the constitutionally mandated census central to apportioning political power at every level of our representative form of government, but the data collected influence the allocation of more than \$800 billion in federal funds every year, along with countless policy and investment decisions by government agencies, nonprofit organizations, and private enterprise.



Any effort at this late date to disrupt the decade-long planning process, including the misguided decision by the Trump administration to insert an untested citizenship question at the last minute, threatens the ability of the Census Bureau to effectively carry out this constitutional mandate and undermines the likelihood that the 2020 Census will fairly count all communities. These actions to undermine the integrity of the count are damaging. But even more dangerous are efforts, like those being brought before the subcommittee today, to exclude noncitizens and/or undocumented residents from the census counts used for congressional apportionment. These are an assault on the Constitution.

Every census since the first enumeration in 1790 has included citizens and non-citizens alike. Both Republican and Democratic administrations, through the U.S. Department of Justice, have confirmed unequivocally that the Constitution requires a count of all persons living in the United States on Census Day, regardless of citizenship or legal status. In fact, in adopting the 14th Amendment to the Constitution, Congress rejected proposals to allocate seats in the U.S. House of Representatives based on the population of eligible voters rather than total population.

Indeed, the 14th Amendment clearly states that the apportionment of members of the House of Representatives is based on a full count of residents in each state. This amendment was enacted in part to repeal the provisions of Article I in the Constitution, which counted a slave as only three-fifths of a person for apportionment purposes. Efforts to exclude some residents from this clear constitutional mandate evoke a shameful and long-discarded historical legacy.

An Assault on the Constitution

Nevertheless, some members of Congress have sought over the past several decades to exclude people who are not legal residents, or even all non-citizens, from the apportionment base. Beyond the dubious constitutionality of such proposals, it would be nearly impossible to determine the legal status of all residents with any accuracy, in order to exclude some from the state population totals used for congressional apportionment and possibly for congressional redistricting. And while no proposals have suggested removing noncitizens or undocumented residents from the census numbers used to allocate more than \$800 billion annually in federal program funds — any effort to determine legal status would jeopardize the accuracy of the entire census, leaving public, private, and nonprofit decision-makers with bad information for all purposes.

Chairman King's "Census Accuracy Act of 2017" does not explicitly aim to affect the apportionment base, but simply to "document" the number of immigrants and their legal status. But he has made his ultimate goal clear by releasing a video on December 22, 2017 urging President Trump to support the exclusion of undocumented residents from the census-derived state population totals used for congressional apportionment.

Among those on the witness list for today's hearing is Alabama Attorney General Steve Marshall, who recently joined Rep. Mo Brooks in [filing](#) a federal lawsuit seeking to prevent the Census Bureau from counting undocumented immigrants in determining a state's population for the purposes of apportionment. The lawsuit claims that Alabama will lose a House seat and a vote in the electoral college



if the Census Bureau uses a count of the entire population. Marshall's claim that a full population count violates the 14th Amendment is flatly wrong and contrary to the clear historical record.

Also on the witness list is J. Christian Adams. Adams has an extensive background in voter suppression and has supported aggressive mass voter registration purges that go beyond what is required by law. Adams was on the sham commission on election integrity that was led by Kansas Secretary of State Kris Kobach and Vice President Pence and which was ultimately disbanded by President Trump on January 3, 2018. According to newspaper reports, Kobach said he encouraged Trump to add a citizenship question to the census.

Another witness, Steven Camarota, is director of research for the Center for Immigration Studies, a group with a documented hostility to immigration. While arguing against bipartisan comprehensive immigration reform legislation in 2013, Camarota acknowledged that the "resident population" for apportionment includes all immigrants, citizen and noncitizen and undocumented. But Camarota asserted that "Congress may have the authority to change who is included in the apportionment population, but has so far has not done so." His citation for the claim notes that an allied organization, the Federation for American Immigration Reform, sued to block the Census Bureau from counting undocumented immigrants in the 1980 Census. Because that suit was dismissed by the U.S. Supreme Court on grounds of standing, Camarota concluded, "the constitutionality of excluding illegal immigrants from the apportionment has yet to be decided by a court of law."

In fact, the Constitution and laws are clear: every person counts. Equally clear is that the impact of actions that interfere with a fair and accurate 2020 Census will fall disproportionately on already vulnerable communities, denying them of fair representation and vital community resources. Communities of color, urban and rural low-income households, immigrants, and young children are all at risk of being undercounted relative to the rest of the population. The insertion of untested questions about citizenship and immigration status threaten to exacerbate those undercounts; the insertion of such questions with the explicit or unstated goal of using the results to distort congressional reapportionment is a threat to the basic structure of our representative form of government.

Conclusion

The Leadership Conference and its member organizations look forward to working with all members of this committee to ensure a cost-effective, secure, and above all, accurate and inclusive census in every one of the nation's communities.